

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TIMOTHY VALDEZ,

Plaintiff,

vs.

Civ. No. 08-933 RHS.

MICHAEL J. ASTRUE, Commissioner
of the Social Security Administration,

Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION FOR ATTORNEY'S FEES**

THIS MATTER comes before the Court on Plaintiff's Motion for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. §2412 [(“EAJA”)] (“Motion for Fees”), filed November 25, 2009 [**Doc. No. 28**]. Plaintiff seeks attorney's fees in the amount of \$ 6,785.02 for 1.58 hours of attorney work expended at an hourly rate of \$ 173.00 in 2008 and 38.08 hours of attorney work expended at an hourly rate of \$ 171.00 in 2009. The Government does not object to the amount of EAJA fees requested, but does object to Plaintiff's request that the EAJA fees be paid to his attorney.¹ (Response to Plaintiff's Motion for Fees at 1, filed Dec. 10, 2009 [**Doc. No. 31**]). The Tenth Circuit noted that “the statutory language alone makes it clear that the prevailing party and *not the attorney* may recover an award of attorney's fees” under the EAJA. Manning v. Astrue, 510 F.3d 1246, 1251 (10th Cir. 2007) (emphasis added). Having determined that Plaintiff was the “prevailing party” in the underlying action and that the Government's position was not “substantially justified,” the Court will grant Plaintiff's Motion

¹See Motion for Fees at 1 (requesting “an award of attorney's fees and costs . . . to be paid to the plaintiff's *attorney*” (emphasis added)). Plaintiff's counsel is cautioned that this is not the first time one of his clients has requested that EAJA fees be paid to the attorney.

for Fees and award \$ 6,785.02 in attorney's fees to Plaintiff. 28 U.S.C. § 2412(d)(1)(A); Harris v. Railroad Ret. Bd., 990 F.2d 519, 520 (10th Cir. 1993). In accordance with Manning, the Court will deny Plaintiff's request that said fees be awarded to his attorney.

WHEREFORE,

IT IS ORDERED that Plaintiff's Motion for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. §2412 [**Doc. No. 28**] is **granted in part** and **denied in part** as follows:

1. Plaintiff's request for an award of \$ 6,785.02 in attorney's fees is **granted**.
2. Plaintiff's request that said fees be awarded to his attorney is **denied**.

Robert Hayes Scott
ROBERT HAYES SCOTT
UNITED STATES MAGISTRATE JUDGE